

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

RICHARD MOODY, )  
)  
Movant, )  
)  
v. ) No. 4:06CV80(SNL)  
)  
UNITED STATES OF AMERICA, )  
)  
Respondent. )

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Richard Moody to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1].

**Background**

Movant pleaded guilty to conspiracy to manufacture methamphetamine and conspiracy to possess pseudoephedrine. See United States v. Moody, No. 4:03CR278(SNL) (E.D. Mo.). On November 4, 2003, movant was sentenced to two concurrent terms of 168 months imprisonment to be followed by a total of five years supervised release. Id. Movant did not appeal his convictions or sentences.

**The motion**

Movant alleges that his convictions and sentences are invalid under the Supreme Court's decision in Booker v. United States, 125 S. Ct. 738 (2005).

### **Discussion**


Title 28 U.S.C. § 2255 now provides that a one-year period of limitations applies to § 2255 motions. As applied to this case, movant had until approximately November 14, 2004, to file a § 2255 motion. The instant § 2255 motion was not filed until January 17, 2006. Therefore, the instant § 2255 motion is untimely. Movant argues that the instant motion is timely under § 2255(3) which provides that the limitations period may run from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255(3). The Supreme Court's decision in Booker, however, does not apply retroactively to cases on collateral review. See Never Misses A Shot v. United States, 413 F.3d 781, 783-85 (8th Cir. 2005).

In accordance with the foregoing,

**IT IS HEREBY ORDERED** that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1] is **DISMISSED**.

An appropriate order shall accompany this memorandum and order.

Dated this 27th day of January, 2006.

  
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SENIOR UNITED STATES DISTRICT JUDGE